



To: Members of the Michigan House Tax Policy Committee
From: Tricia Kinley, Sr. Director of Tax & Regulatory Reform
Date: September 12, 2012
Subject: Senate Bills 335 and 336

This memo is to alert you to the Michigan Chamber's support for SBs 335 & 336 which would clarify the application of Sales and Use Taxes for software as a service (SaaS), commonly referred to as "cloud computing." We have heard from numerous companies throughout the state facing uncertainty around this issue and we encourage you to vote Yes on this important legislation.

(SaaS) is one of the fastest growing areas of electronic commerce and involves an application service provider's (ASP's) use of its own hardware and its own proprietary software to provide a service to customers that access the ASP's webpage using the customers' computers. Customers pay a fee for access that can be based on the amount of access (e.g., per month), the volume of transactions processed by the service, or other methods.

- The SaaS provider owns and has full possession of the software.
- The Customer has no possession or control of the software, and loses access to the software at the end of the contract.

In Michigan, sales tax applies to prewritten software, but does not apply to services. And if both software and services are being sold in a mixed transaction, taxability is determined based on whether or not the software is incidental to the service.

Furthermore, property is taxed in the state where the property is located (state of ASP server). Services are taxed in the state where the customer receives the service (state of customer access). But if SaaS is taxable as property...and is somehow sourced to the state of customer access, how is a sale sourced when the customer has access from many states?

Unfortunately, Michigan's position on this issue is unclear. There has been no public guidance, but private rulings issued by Treasury have created confusion since some conclude taxable, and others non-taxable.

The State has taken an aggressive audit position, asserting SaaS is taxable and that tax is due on the entire invoice, regardless of where the server or customer access is located. This approach creates a new "headquarters tax" for Michigan based companies.

The business community needs clarity on this rapidly growing issue. Having the legislature address this issue will avoid prolonged court battles that could result from potential actions by Treasury that, at minimum create uncertainty, and at worst, support taxability.

If you have any questions, please contact Tricia Kinley, Sr. Director of Tax & Regulatory Reform at (517) 290-2613, or Jim Holcomb, Sr. Vice President, Business Advocacy and Associate General Counsel, at (517) 371-2100.